

REMARKS

Claim 1 has been amended to incorporate the subject matter of Claims 2, 6, 13 and 18, which have been canceled, without prejudice. Claim 7 has been amended to incorporate the subject matter of Claims 8, 11, 15 and 19 which have been canceled, without prejudice. Care has been taken not to introduce any new matter.

The Present Invention

The present invention is directed to a superior nut butter made in a form which is very spreadable and that takes less force to spread with a knife. Independent claim 1, as amended, describes a nut butter or nut spread composition comprising

- (i) a nut ingredient,
- (ii) from about 0-10% seasonings,
- (iii) from about 0.5-2.5% stabilizer, (iv) from about 0-1% emulsifier and (v) from about 0-60% bulking agent, and the particle size distribution of said nut butter or nut spread composition having a lower percentage of fine and coarse sized particles and a higher percentage of medium sized particles such that at least 90% of the particles are smaller than about 40 microns, at least 50% of the particles are smaller than about 10 microns, at least 10% of the particles are smaller than about 2 microns, and 1.4% of the particles are larger than 58.7 microns wherein the composition has a span from about 4.16 to about 6.0;

said composition having a Brookfield viscosity from about 6,000 to about 14,000 centipoise taken at a temperature of 85° C after 60 seconds at 20 rpm with a spindle D, heliopath; and a spreadability of from about 4.915 kg to about 5.215 kg.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, the type of nut ingredient and the addition of oil *where defatted nuts are used*. Independent claim 1 is still further defined by claim 14 which set forth that the composition is a once ground composition.

Independent claim 7 is directed to a reduced fat nut spread comprising

(i) a nut ingredient wherein the nut ingredient is a peanut ingredient, (ii) from about 0-10% seasonings, (iii) from about 0.3-2% stabilizer, (iv) from about 0-1% emulsifier and (v) from about 10-60% bulking agent and the particle size distribution of said nut spread composition having a lower percentage of fine and coarse sized particles and a higher percentage of medium sized particles such that at least 90% of the particles are smaller than about 40 microns, at least 50% of the particles are smaller than about 10 microns, at least 10% of the particles are smaller than about 2 microns and 1.4% of the particles are larger than 58.7 microns wherein the composition has a spreadability of about 4.000 kg to about 5.300 kg;

said composition having a Brookfield viscosity from about 6,000 to about 14,000 centipoise taken at a temperature of 85° C after 60 seconds at 20 rpm with a spindle D, heliopath; and

wherein the composition has a span from about 2.5 to about 6.0.

The invention of claim 7 is further defined by the dependent claims which claim, among other things, the type of nut ingredient, the addition of oil *where defatted nuts are used*, and a spreadability, from about 4.915 kilograms to about 5.215 kilograms. Still further, claim 7 is further defined by claim 16 which sets forth that the composition is a once ground composition.

I. Rejection Under 35 U.S.C. §102(b)

Claims 1-12 and 18-20 have been rejected under 35 USC §102(b) as being anticipated by Wong et al., U.S. Patent No. 5,693,357 (hereinafter 357). While Applicants respectfully traverse, in the interest of progressing the passing of this application to issuance, this rejection has been rendered moot by the incorporation of the subject matter of claim 13 in claim 1.

II. Rejection Under 35 USC §103

The Examiner has rejected claims 1, 3, 4, 5, 9-11, 12, 14, and 18-20 under 35 USC §103 as being unpatentable over Wong et al., U.S. Patent No. 5,693,357 (hereinafter '357) in view of Wong et al., U.S. Patent No. 5,885,645 (hereinafter '645) and further in view of Walling '919. *Applicants respectfully submit that the nut butter of Walling et al. does not have the characteristics of the nut butter obtained through the one-step process of the present invention owing, in part, to differences in particle size distribution.* While Applicants respectfully traverse, in the interest of progressing the passing of this application to issuance, this rejection has been rendered moot by the claim amendments.

III. Rejection Under 35 USC §103

Claims 2, 6, 7 and 8, 13, 15, 16 have been rejected under 35 USC §103 as being unpatentable over Wong et al., U.S. Patent No. 5,693,357 (hereinafter '357) in view of Wong, U.S. Patent No. 5,885,645 (hereinafter '645) as applied to claims 1, 3-5, 9-12, 14, 18-20, and further in view of Meade, U.S. Patent No. 6,010,737 (hereinafter '737). In the rejection, the Examiner mentions, in summary, that the '737 reference discloses viscosities within the claimed range and it would be obvious to use/want a viscosity as disclosed by the '737 reference in the compositions described in the '357 reference. Furthermore, the Examiner continues to believe it's obvious to vary particle sizes to obtain a particular spreadability.

While Applicants respectfully traverse, in the interest of progressing the passing of this application to issuance without delay, Claims 1 and 7 have been amended to incorporate the subject matter of claims 18 and 19, respectively.

Applicants reasons for traversal are summarized below. Firstly, since claim 7 cannot be rejected under 35 USC §103 with respect to the applied references above, those claims which are dependent from claim 7 cannot be properly rejected under the combination of references, namely the '357 reference and the '645 reference.

None of the important and critical limitations set forth in the presently claimed invention, for example as they apply to particle size distribution, are even remotely described in the '357 and '645 reference. The '357 reference merely discloses a nut paste having a particular monomodal particle size distribution. The monomodal nut butters and spreads of the '357 reference typically comprise from about 50% to 100% of a nut

paste with water insoluble solids comprising a particle size of less than about 21.6 microns. The '357 reference does not, even remotely, teach, suggest or describe any of the important and critical limitations set forth in independent claims 1 and 7. Particularly, there is no teaching whatsoever in the '357 reference that even remotely suggests the spreadability of the presently claimed compositions. Moreover, nothing in the '357 reference even remotely suggests the particle size distribution set forth in independent claims 1 and 7, and based on the formula in Example 5, the paste in the '357 reference will not have the span of the compositions claimed in this invention.

The deficiencies in the '357 reference are not cured by the '645 reference since the same merely discloses separately milled nut solids and particular water soluble solids used to reduce stickiness and improve flavor intensity of a nut spread. Nothing in the '645 reference even remotely describes any of the limitations set forth in the presently claimed invention. Moreover, the combination of references does not suggest the span of the composition as presently claimed.

Furthermore, the '737 reference merely describes nut spreads having reduced fat and reduced calories *by means of using* from about 4 to about 18% of a low or no calorie triacyl-glycerol oil *to replace the natural nut oil*.

The combination of references do not suggest that at least 10% of the particles present within the composition are smaller than about 2 microns and do not suggest that the composition is one which is a once ground composition. The important particle size distribution of the composition of the present invention is not suggested by the references. In view of the above, all of the important and critical limitations set forth in the presently claimed invention are not found in the combination of references.

In light of the above amendments and remarks, it is respectfully requested that the application be allowed to issue.

If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,



Ellen Plotkin
Attorney for Applicant(s)
Reg. No. 36,636

EP:ss
(201) 894-2253